

The Kikuchi Reference Is Improperly Applied as Prior Art in Rejecting Claims 17-36

Claims 17-36 stand rejected under 35 U.S.C. § 103(a) as being obvious in view of Kikuchi and various combinations of Bateman, Forster, Salvador, Carrender, and Wei. The present application claims priority under 35 U.S.C. § 119 and has a priority date of July 3, 2002, which is earlier than the priority date of the Kikuchi reference. More specifically, the Kikuchi reference was purportedly published on June 9, 2004, and claims priority to a Japanese patent application filed October 1, 2003. Accordingly, Kikuchi has a priority date that is no earlier than October 1, 2003. Withdrawal of the rejections under 35 U.S.C. § 103 is respectfully requested because the present application has a priority date of July 3, 2002, which is earlier than the priority date of the Kikuchi reference. Therefore, Kikuchi is improperly cited in the Office Action as a prior art reference in rejecting each of the Claims 17-36 under 35 U.S.C. § 103(a).

For the Examiner's reference, the present application is a National Stage filing of PCT Application No. PCT/GB2003/002846, filed July 2, 2003, which claims the benefit of the Great Britain Patent Application No. 0215318.7 filed on July 3, 2002.

A prior art reference under 35 U.S.C. § 103(a) must be available as prior art according to 35 U.S.C. § 102. In relevant part, 35 U.S.C. § 102(a) and (e) allow a reference to be used as prior art only if the reference was publicly available prior to filing of the application or the reference is a published patent application that has a filing date prior to the filing date of the invention. Because the present application has a priority date that is earlier than the priority date of Kikuchi, the Kikuchi reference is not available as Section 102 prior art and, thus, is not available as Section 103 prior art. Because Kikuchi is not available as Section 103 prior art, applicant respectfully submits that the rejection of Claims 17-36 in view of Kikuchi and the various combinations of Bateman, Forster, Salvador, Carrender, and Wei is in error and request withdrawal of this ground for rejection.

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CONCLUSION

In view of the foregoing remarks, applicant submits that the claims of the present application are in condition for allowance. Reconsideration and allowance of the pending claims at an early date is solicited. If the Examiner has any questions regarding this matter, the Examiner is invited to contact applicant's representative at the number below.

Respectfully submitted,

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